

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge ordered the Workers Compensation Fund to reimburse the respondent and its insurance carrier all of the benefits paid claimant in this proceeding. The Workers Compensation Fund requested the Appeals Board to review that finding. Fund liability is the only issue before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be affirmed.

The Fund contends it should not have been assessed 100 percent of the liability in this proceeding. It argues that the respondent and its insurance carrier failed to establish that the claimant's injury or disability would not have occurred but for the claimant's preexisting physical impairment. Because respondent knew of claimant's preexisting physical impairment and because claimant's preexisting impairment constituted a handicap in her obtaining or retaining employment, those matters are not in issue.

Only two physicians testified in this proceeding, board-certified orthopedic surgeon Roger W. Hood, M.D., and board-certified orthopedic surgeon Mark Bernhardt, M.D. Based upon his review of claimant's medical history and the knowledge obtained while treating claimant in September 1993, Dr. Hood testified that claimant had a 10 percent whole body functional impairment which consisted of 5 percent from the May 14, 1993, work-related accident and 5 percent from preexisting degenerative disk disease. When providing his opinion regarding the relationship between claimant's preexisting condition and the May 14, 1993, accidental injury, at page 13 of his deposition Dr. Hood said:

"I don't think she would have suffered any impairment in May of '93 but for the presence of the preexisting degenerative disk disease."

Dr. Hood did not alter that opinion on cross-examination. At Dr. Bernhardt's deposition, the parties did not ask for his opinion regarding the relationship between the preexisting impairment and the injury or disability sustained as a result of the work-related accident. Therefore, Dr. Bernhardt's testimony offers no probative value in determining Fund liability.

The Appeals Board finds Dr. Hood's opinion to be uncontroverted, credible, and persuasive. Based upon the above, under K.S.A. 1992 Supp. 44-567(a)(1) the Workers Compensation Fund is required to reimburse the respondent and its insurance carrier all of the benefits paid to claimant as a result of the May 14, 1993, accidental injury.

The Appeals Board hereby adopts the Special Administrative Law Judge's findings and conclusions as set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated July 19, 1996, entered by Special Administrative Law Judge Michael T. Harris should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Anton C. Andersen, Kansas City, KS
Robert V. Talkington, Iola, KS
Michael T. Harris, Special Administrative Law Judge
Office of Administrative Law Judge, Wichita, KS
Philip S. Harness, Director